

UNITED STATES DISTRICT COURT
DISTRICT OF - MASSACHUSETTS

Hudson Savings Bank

vs.

George C. Austin III, Executor, et al

Civil Action, File No. 1:05cv11604

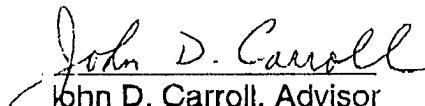
AFFIDAVIT OF DEBT

John D. Carroll, being duly sworn, deposes and says:

1. That he is an Advisor in the Collection Technical Services Group, Internal Revenue Service, 380 Westminster Street, Providence, Rhode Island, and has knowledge of the outstanding tax liabilities of George C. Austin III and is authorized to make this affidavit.
2. That the debtor, George C. Austin III, is liable for unpaid Trust Fund Recovery Penalty liabilities for the periods ended 12/31/99, 03/31/00, 06/30/00, 09/30/00, 12/31/00, 03/31/01 in the amount of \$439,436.06.

Tax	Period	Date Assessed	Assessed Balance \$	Accrued Interest and Penality \$	Balance Due 04/30/2007 \$
6672	12/31/99	12/04/2000	206,756.53	101,149.17	307,905.70
6672	03/31/00	03/18/2002	9,365.53	3,300.90	12,666.43
6672	06/30/00	03/18/2002	21,032.36	7,392.26	28,424.62
6672	09/30/00	03/18/2002	19,703.83	5,925.34	26,629.17
6672	12/31/00	03/18/2002	24,636.84	3,659.13	33,295.97
6672	03/31/01	03/18/2002	22,578.48	7,935.69	30,514.17

3. That additional interest will accrue after April 30, 2007, at the rate specified by Internal Revenue Code Sections 6621 and 6622.


John D. Carroll, Advisor
Technical Services
Badge 05-02132

Subscribed and sworn before me this 11th of April 2007.


Notary Public
My commission expires: 01/16/2010

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

HUDSON SAVINGS BANK,)
Plaintiff,)
v.)
GEORGE C. AUSTIN, III, Executor of the) CIVIL ACTION
Estate of George Clifford Austin, Jr. a/k/a) NO. 05-11604-GAO
G. Clifford Austin, II;)
GEORGE C. AUSTIN, III, as Heir of)
George Clifford Austin, Jr.)
a/k/a G. Clifford Austin, II;)
UNITED STATES OF AMERICA;)
and MASSACHUSETTS DEPARTMENT)
OF REVENUE,)
Defendants.)
)

NOTICE OF FILING

PLEASE TAKE NOTICE that on this day the original certified or attested to copies of the state court pleadings received from the Clerk/Magistrate of the Middlesex Superior Court, were filed with the United States District Court.

MICHAEL J. SULLIVAN,
UNITED STATES ATTORNEY

BY:

Barbara Healy Smith Esq.

Barbara Healy Smith
Assistant U. S. Attorney
U.S. Courthouse - Suite 9200
1 Courthouse Way
Boston, MA 02210
(617) 748-3282

I hereby certify that a true copy of the above document was served upon (each party appearing pro se and) the attorney of record for each other party by mail on

August 16, 2005

EMC

Assistant U.S. Attorney

MAS-20041213
coleman

Commonwealth of Massachusetts
MIDDLESEX SUPERIOR COURT
Case Summary
Civil Docket

08/04/2005
09:05 AM

MICV2005-01231

Hudson Savings Bank v Austin III, Executor Estate of George Clifford Austin Jr aka et al

Defendant Massachusetts Department of Revenue P O Box 9565 100 Cambridge Street Boston, MA 02114-9565 Served: 06/15/2005 Answered: 06/27/2005 Answered 06/27/2005	Private Counsel 435260 Eileen Ryan McAuliffe Mass Revenue Dept 100 Cambridge Street PO Box 9565 Boston, MA 02114-9565 Phone: 617-626-3217 Fax: 617-626-3245 Active 06/22/2005 Notify
*** See Attorney Information Above ***	

Date	Paper	Text
04/08/2005	1.0	Complaint & civil action cover sheet filed
04/08/2005		Origin 1, Type D99, Track F
06/24/2005	2.0	SERVICE RETURNED: George C Austin III, Heir of George Clifford Austin Jr aka(Defendant), 6/10/05, in hand to George C. Austin, 24 Bolton St, Marlboro, MA 01752
06/24/2005	3.0	SERVICE RETURNED: United States of America (IRS)(Defendant), 6/10/05, in hand to Peter Sorrentino, agent, 118 Turnpike Rd, Southborough,MA
06/24/2005	4.0	SERVICE RETURNED: George Austin III, Executor Estate of George Clifford Austin Jr aka(Defendant), 6/10/05, in hand to George C. Austin, 24 Bolton, St, Marlboro, MA 01752
06/24/2005	5.0	SERVICE RETURNED: Massachusetts Department of Revenue(Defendant), 6/15/05, in hand to J. Haston, agent, 100 Cambridge St, Boston, MA
06/27/2005	6.0	ANSWER: Massachusetts Department of Revenue(Defendant)
07/05/2005		Pleading, Motion to Extend Tracking Order, returned to Daniel J Burger, Esq.: Does not Comply with Rule 9A.
07/08/2005	7.0	Plaintiff's ASSENTED to MOTION to Extend Time Within Which to Serve Extend Tracking Order by 60 days
07/12/2005	8.0	MOTION to Extend Time within which to serve extend tracking order, Assented to
07/12/2005		MOTION (P#8) Motion ALLOWED Dated: July 7, 2005 (Joseph M. Walker, III, Justice) Notices mailed July 12, 2005

REMAND

**United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:05-cv-11604-GAO**

Hudson Savings Bank v. Austin et al
Assigned to: Judge George A. O'Toole, Jr
Case in other court: First Circuit, 06-02043
Cause: 26:7401 IRS: Tax Liability

Date Filed: 08/01/2005
Jury Demand: None
Nature of Suit: 870 Taxes
Jurisdiction: U.S. Government
Defendant

Plaintiff

Hudson Savings Bank

represented by **Daniel J. Burger**
Law Offices of Joseph J. Connolly
74 Main Street
Marlborough, MA 01752
508-485-4488
Fax: 508-624-4110
Email: dburger@jconnollyesq.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

George C. Austin, III

*Executor of the Estate of George
Clifford Austin Jr. and as Heir of
George Clifford Austin, Jr.
also known as
G. Clifford Austin, II*

Defendant

United States of America

represented by **Barbara Healy Smith**
United States Attorney's Office
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TERMINATED: 05/26/2006
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Defendant

Massachusetts Department of Revenue

represented by **Eileen Ryan McAuliffe**
 Massachusetts Department of Revenue
 100 Cambridge Street
 P. O. Box 9565
 Boston, MA 02214-9565
 617-626-3217
 Fax: 617-626-3245
 Email: mcauliffe@dor.state.ma.us
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
08/01/2005	1	NOTICE OF REMOVAL by United States of America from Middlesex Superior Court, case number 05-01231-G. \$ 0., filed by United States of

		America.(Edge, Eugenia) (Entered: 08/02/2005)
08/01/2005		If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Collings. (Edge, Eugenia) (Entered: 08/02/2005)
08/01/2005	<u>2</u>	NOTICE of Appearance by Barbara Healy Smith, Lydia Bottome Turanchik on behalf of United States of America. (Edge, Eugenia) (Entered: 08/02/2005)
08/01/2005	<u>3</u>	Request for Enlarge of Time to September 28, 2005 to File Response/Reply as to <u>1</u> Notice of Removal by United States of America. (Edge, Eugenia) (Entered: 08/02/2005)
08/09/2005	<u>4</u>	MOTION to Dismiss by Massachusetts Department of Revenue. (McAuliffe, Eileen) Additional attachment(s) added on 8/10/2005 (Edge, Eugenia). (Entered: 08/09/2005)
08/09/2005	<u>5</u>	MEMORANDUM in Support re <u>4</u> MOTION to Dismiss filed by Massachusetts Department of Revenue. (Edge, Eugenia) (Entered: 08/10/2005)
08/09/2005	<u>6</u>	CERTIFICATE OF CONSULTATION re <u>4</u> MOTION to Dismiss by Eileen Ryan McAuliffe on behalf of Massachusetts Department of Revenue. (Edge, Eugenia) (Entered: 08/10/2005)
08/16/2005	<u>7</u>	STATE COURT Record.)(Attachments: # <u>1</u> State docket sheet)(Edge, Eugenia) (Entered: 08/18/2005)
08/19/2005	<u>8</u>	<i>Request for Extension of Time to Respond to Respond to the Commonwealth's Motion to Dismiss - Letter/request (non-motion).</i> (Bottome Turanchik, Lydia) (Entered: 08/19/2005)
10/12/2005	<u>9</u>	NOTICE of Scheduling Conference Scheduling Conference set for 11/16/2005 02:00 PM in Courtroom 9 before Judge George A. O'Toole Jr.. Please mark your calendars accordingly. (Lyness, Paul) (Entered: 10/12/2005)
10/12/2005	<u>10</u>	Assented to MOTION to Continue Scheduling Conference by United States of America.(Turanchik, Lydia) (Entered: 10/12/2005)
10/14/2005		Judge George A. O'Toole Jr.: Electronic ORDER entered granting <u>10</u> Motion to Continue (Lyness, Paul) (Entered: 10/14/2005)
10/14/2005		NOTICE OF RESCHEDULING Scheduling Conference set for 11/28/2005 02:00 PM in Courtroom 9 before Judge George A. O'Toole Jr.. Please mark your calendars accordingly.(Lyness, Paul) (Entered: 10/14/2005)
10/26/2005		NOTICE OF RESCHEDULING Scheduling Conference set for 12/13/2005 02:00 PM in Courtroom 9 before Judge George A. O'Toole Jr.. Please mark your calendars accordingly. (Lyness, Paul) (Entered: 10/26/2005)
12/07/2005	<u>11</u>	JOINT SUBMISSION pursuant to Local Rule 16.1 by United States of

		America.(Turanchik, Lydia) (Entered: 12/07/2005)
12/12/2005		Notice Resetting or Cancelling Hearing. Hearing rescheduled or cancelled: The scheduling conference for 12/13/05 is cancelled (Lyness, Paul) (Entered: 12/12/2005)
12/22/2005	<u>12</u>	Opposition re <u>4</u> MOTION to Dismiss filed by United States of America. (Turanchik, Lydia) Additional attachment(s) added on 1/4/2006 (Edge, Eugenia). (Entered: 12/22/2005)
01/03/2006	<u>13</u>	MOTION for Leave to File by Massachusetts Department of Revenue. (McAuliffe, Eileen) (Entered: 01/03/2006)
01/04/2006	<u>14</u>	NOTICE by United States of America re <u>13</u> MOTION for Leave to File (Turanchik, Lydia) (Entered: 01/04/2006)
01/13/2006		Judge George A. O'Toole Jr.: Electronic ORDER entered granting Nunc Pro Tunc <u>3</u> Motion for Extension of Time to File Response/Reply re <u>3</u> MOTION for Extension of Time to September 28, 2005 to File Response/Reply as to <u>1</u> Notice of Removal Responses due by 9/28/2005 (Lyness, Paul) (Entered: 01/13/2006)
01/18/2006	<u>15</u>	REPLY to Response to Motion re <u>13</u> MOTION for Leave to File filed by Massachusetts Department of Revenue. (McAuliffe, Eileen) (Entered: 01/18/2006)
01/20/2006	<u>16</u>	NOTICE of filing attachments by Massachusetts Department of Revenue re <u>15</u> Reply to Response to Motion. c/s (Attachments: # <u>1</u> Copy of Joint Motion for Release of Funds filed in Superior Court# <u>2</u> Attached Court of Appeals Judgement dtd 12/8/05# <u>3</u> Copy of Memo of Decision and Order dtd 7/3/89)(Edge, Eugenia) (Entered: 01/20/2006)
01/26/2006		Judge George A. O'Toole Jr.: Electronic ORDER entered granting <u>13</u> Motion for Leave to File (Lyness, Paul) (Entered: 01/26/2006)
03/29/2006	<u>17</u>	Judge George A. O'Toole Jr.: MEMORANDUM AND ORDER entered granting <u>4</u> Motion to Dismiss. Therefore, I conclude that the Commonwealth must be dismissed as a result of its proper invocation of its Eleventh Amendment immunity and that, the Commonwealth being an indispensable party, the entire action must be dismissed. Accordingly, the Commonwealth's Motion to Dismiss Entire Case, Docket # <u>4</u> , is GRANTED and the case is DISMISSED in its entirety. (Lyness, Paul) Additional attachment(s) added on 3/30/2006 (Lyness, Paul). (Entered: 03/30/2006)
03/30/2006		Notice of correction to docket made by Court staff. Correction: The Memorandum and Order corrected because: Wrong document attached (Lyness, Paul) (Entered: 03/30/2006)
03/30/2006	<u>18</u>	Judge George A. O'Toole Jr.: ORDER entered. JUDGMENT in favor of Defendants against Plaintiff(Lyness, Paul) (Entered: 03/30/2006)
05/26/2006	<u>19</u>	NOTICE of Appearance by Gerald C. Miller on behalf of United States of America (Miller, Gerald) (Entered: 05/26/2006)

05/26/2006	<u>20</u>	NOTICE OF APPEAL as to <u>17</u> Order on Motion to Dismiss,, by United States of America. \$ 455 NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov/clerks/transcript.htm MUST be completed and submitted to the Court of Appeals. Appeal Record due by 6/15/2006. (Miller, Gerald) (Entered: 05/26/2006)
05/26/2006		Notice of correction to docket made by Court staff. Attorney Gerald Miller's record in this case was modified to allow electronic noticing. (Hurley, Virginia) (Entered: 05/26/2006)
05/26/2006	<u>21</u>	NOTICE of Withdrawal of Appearance by Lydia Bottome Turanchik (Turanchik, Lydia) (Entered: 05/26/2006)
07/07/2006	<u>22</u>	Certified and Transmitted Record on Appeal to US Court of Appeals re <u>20</u> Notice of Appeal, (Attachments: # <u>1</u>)(Ramos, Jeanette) (Entered: 07/07/2006)
07/13/2006	<u>23</u>	USCA Case Number 06-2043 for <u>20</u> Notice of Appeal, filed by United States of America,. (Ramos, Jeanette) (Entered: 07/13/2006)
03/06/2007	<u>24</u>	USCA Judgment as to <u>20</u> Notice of Appeal, filed by United States of America. This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts. Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of dismissal is reversed, and the matter is remanded to the district court for further proceedings consistent with the opinion issued this day. Thereafter, if any issue remains to be resolved between the Commonwealth of Massachusetts and Hudson Savings Band the remainder of the case should be remanded to the state court. (Judgment entered in the USCA 3/5/2007). (Ramos, Jeanette) (Entered: 03/06/2007)
03/06/2007	<u>25</u>	OPINION of USCA (Ramos, Jeanette) (Entered: 03/06/2007)
04/02/2007		ELECTRONIC NOTICE of Hearing : Status Conference set for 4/30/2007 02:00 PM in Courtroom 9 before Judge George A. O'Toole Jr.. Please mark your calendars accordingly. (Lyness, Paul) (Entered: 04/02/2007)
04/04/2007	<u>26</u>	NOTICE of Appearance by Robert J. Kovacev on behalf of United States of America (Kovacev, Robert) (Entered: 04/04/2007)
04/24/2007	<u>27</u>	Assented to MOTION to Deposit Funds <i>into Court</i> by Hudson Savings Bank.(Burger, Daniel) (Entered: 04/24/2007)
04/26/2007		Judge George A. O'Toole Jr.: Electronic ORDER entered granting <u>27</u> Motion to Deposit Funds. (Edge, Eugenia) (Entered: 04/26/2007)
04/26/2007	<u>28</u>	MANDATE of USCA as to <u>20</u> Notice of Appeal, filed by United States of America. This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts and was argued by counsel. Upon consideration whereof, it is now ordered, adjudged and

		decreed as follows: The judgment of dismissal is reversed, and the matter is remanded to the district court for further proceedings consistent with the opinion issued this day. (Mandate entered in the USCA 4/26/2007) (Ramos, Jeanette) (Entered: 04/26/2007)
04/26/2007		Appeal Record Returned: <u>20</u> Notice of Appeal, (Ramos, Jeanette) (Entered: 04/26/2007)
04/30/2007		Electronic Clerk's Notes for proceedings held before Judge George A. O'Toole Jr.: Status Conference held on 4/30/2007. Application for an entry of default to be filed by counsel. (Court Reporter Shelly Killian.) (Lyness, Paul) (Entered: 05/01/2007)
05/01/2007	<u>29</u>	APPLICATION for Writ of Default Judgment by Massachusetts Department of Revenue. (McAuliffe, Eileen) (Entered: 05/01/2007)
05/02/2007	<u>30</u>	NOTICE: Clerk's ENTRY OF DEFAULT as to George C. Austin, III, as Executor of the Estate of George Clifford Austin, Jr. a/k/a G. Clifford Austin, II and the defendant, George C. Austin, III, as Heir of George Clifford Austin, Jr. a/k/a G. Clifford Austin, II. (Lyness, Paul) (Entered: 05/02/2007)
05/02/2007	<u>31</u>	Judge George A. O'Toole Jr.: ORDER entered. STANDING ORDER on motions for default judgment re <u>30</u> Notice: Clerk's Entry of Default, (Lyness, Paul) (Entered: 05/02/2007)

PACER Service Center			
Transaction Receipt			
05/14/2007 13:52:53			
PACER Login:	ma0025	Client Code:	
Description:	Docket Report	Search Criteria:	1:05-cv-11604-GAO
Billable Pages:	3	Cost:	0.24